

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNIVERSITY OF CHICAGO MEDICAL)	
CENTER, etc.,)	
)	
Plaintiff,)	
)	
v.)	No. 13 C 4742
)	
KATHLEEN SEBELIUS, Secretary,)	
etc.,)	
)	
Defendant.)	

MEMORANDUM ORDER

Department of Health and Human Services Secretary Kathleen Sebelius ("Secretary") has filed the government's Answer to this action, brought by University of Chicago Medical Center ("Hospital") to obtain judicial review of a final adverse agency decision regarding Medicare reimbursement rendered by Secretary. This memorandum order is issued sua sponte because of one problematic aspect of the Answer.

From the Complaint and Answer it appears that this action will hinge on technical aspects of the rules and procedures that govern any appeal by the Hospital of its Medicare payment claims before Secretary's Provider Reimbursement Review Board ("Board"). To that end Secretary's Answer is accompanied by a transcript of the official file provided by the Board, comprising the record of the Board's proceedings and decision and the election by the Administrator of the Centers for Medicare & Medicaid Services (part of Secretary's Department).

What this Court finds puzzling is how, under the circumstances, Secretary (whose Answer admits a great many of the allegations in the Hospital's Complaint) can include within the Answer disclaimers of the type authorized by Fed. R. Civ. P. ("Rule") 8(b)(5) for use when a responding party lacks knowledge or information sufficient to form a belief as to the truth of a plaintiff's allegations (see Answer ¶¶21-23 and 28). As to each of those, the disclaimed allegations relate to actions taken by Secretary's own Board.

This Court accordingly directs Secretary either (1) to explain how a Rule 8(b)(5) disclaimer of those allegations can be advanced in the objective good faith required by Rule 11(b) or (2) alternatively to amend those portions of the Answer to comply with the mandate of Rule 8(b)(1)(B). Any such brief explanation or amendment should be filed on or before September 26, 2013.



Milton I. Shadur
Senior United States District Judge

Date: September 16, 2013